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Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

In the Matter of	)	MM Docket No. 93-13
	)	
Amendment of Section 73.202(b)	)	RM-8156
Table of Allotments,	)	RM-8234
FM Broadcast Stations	)	
(Blanchard, Louisiana and	)	
Stephens, Arkansas).	)	

To the Commission:

MOTION FOR STAY

COMES NOW Arkansas Wireless Company (Wireless) who moves for a stay of the initiation of the window period for filing of applications in this matter. In support of its request, Wireless states as follows:

The instant Report and Order compares Blanchard, Louisiana with Stephens, Arkansas in an attempt to allocate a new FM frequency. The bureau's conclusion is that the communities are equivalent in terms of reception services and that the new allocation should be made to Blanchard as the larger of the two communities. The staff noted that the difference in population between the two is very small - 38 people - but it held that the population was the only distinguishing factor between the proposals, citing Bostwick and Good Hope, Georgia and Three Oaks and Bridgman, Michigan.<sup>1</sup>

Wireless has requested the Commission review the Report and

<sup>1</sup> 6 FCC Rcd 6084 (1991); 5 FCC Rcd 1004 (1990).

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Order and has noted that neither of the two cases cited considered a difference in population this small. The majority of cases where the Commission has considered small differences in population contain an extensive review of "other public interest matters" as required by the Commission's precedent.<sup>2</sup>

Wireless alleges that according to the 1990 Census data, Stephens, Arkansas has a significant minority population (around 40%). The former Secretary of Commerce, Robert A. Mosbacher, has acknowledged that the 1990 Census was materially in error in undercounting minority population and any undercount seriously undermines the bureau's reliance on population figures as the sole basis for this decision.

Contrary to the bureau's assertion, there are significant differences between the two communities in the availability of reception services, with Stephens, the smaller community, receiving from 50-100% less services per FCC designated category than Blanchard, Louisiana. The bureau failed to acknowledge this disparity or account for it.

Blanchard is a white bedroom community nest to Shreveport, Louisiana. Stephens is a rural community located approximately 75 miles from Shreveport. Because of its proximity to Shreveport, Blanchard has access to many additional sources of media beyond a strict comparison of aural reception services,

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<sup>2</sup> Revision of FCC Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

including newspaper and television media which is not readily accessible in Stephens. The bureau made no findings in these areas.

The requirements for grant of a stay are found in Virginia Petroleum Jobbers Association vs. FPC<sup>3</sup> and Washington Metropolitan Transit Commission vs. Holiday Tours.<sup>4</sup> The movant must meet a four-fold test to justify a stay of administrative action--likelihood of prevailing on the merits; irreparable harm; no harm to other parties; and benefit to the public.

Wireless feels it is very likely to prevail on the merits of its Application for Review. The staff, by delegated authority, has decided this Rulemaking citing only two cases as authority. In its Application for Review, Wireless points out that neither the Bostwick nor the Three Oaks case is comparable with the instant Rulemaking in terms of the number of people which constitute the difference in population of the communities and both a more thorough analysis of other public interest factors. For this reason, Wireless believes that Stephens, Arkansas, on paper some 38 persons smaller than Blanchard, Louisiana will be preferred as receiving significantly less radio service than Blanchard. This population difference is only 3% of the population from a census riddled with statistical flaws.

There is no injury to other parties which would follow if a

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<sup>3</sup> 25 F.2d 921 (D.C. Cir. 1958).

<sup>4</sup> 559 F.2d 841 (D.C. Cir. 1977).

stay were granted. The only change would be a moratorium on the receipt of applications by the FCC during the period of time it takes to finalize the Rulemaking. (It is the current practice of the FM Branch staff not to designate applications for hearing until the Rulemaking determinations are final and consequently no application would be granted and then require rescission.)

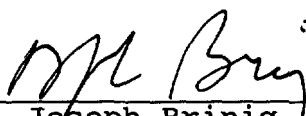
A grant of the stay would be a significant benefit in conserving the resources of other potential applicants and of the Commission. If applications are solicited and received, each applicant (and there may be many since this is little more than a Shreveport allocation) will go to significant expense in preparing its application. Fees in the neighborhood of \$9,000 will be expended within very short order for the application and the hearing. The Commission will be required to allocate resources to studying the applications for tender and acceptability in the normal course of their processing. If the allocation is reconsidered, all these expenditures will be for naught.

Wireless will also be injured by a failure to grant a stay. Wireless has expended significant time and effort in the request for the allocation of the station to Stephens. Continued delay in that allocation and the necessity of further appeals jeopardizes its future and that of the citizens of its proposed service area. The acceptance of applications for Blanchard may, in some way, color the outcome of the proceeding.

For these reasons and those as indicated in its Application for Review, Arkansas Wireless Company requests the window period for receipt of applications for Blanchard, Louisiana as specified in the instant Report and Order be stayed.

Respectfully submitted,

ARKANSAS WIRELESS COMPANY

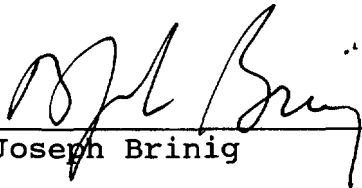
By:   
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CERTIFICATE OF SERVICE

I hereby certify that on November 3, 1993, a true copy of the foregoing Motion for Stay was sent first class, postage prepaid to Daryl Bordelon, 6036 Dillingham Drive, Shreveport, Louisiana 71106.

  
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F. Joseph Brinig